

Current Class: [REDACTED]  
Current Handling: [REDACTED]  
Document Number: 1979SANTIA06910

UNCLASSIFIED

10/2/79

Page: 1

Channel: n/a

Case Number: S200000044

PAGE 01 SANTIA 06910 01 OF 03 022340Z  
ACTION SS-25

INFO OCT-01 ADS-00 SSO-00 /026 W  
-----005341 022350Z /65

O 022248Z OCT 79  
FM AMEMBASSY SANTIAGO  
TO SECSTATE WASHDC IMMEDIATE 4893

[REDACTED] SECTION 1 OF 3 SANTIAGO 6910

**DECAPTIONED**

PASS JUSTICE FOR BARCELLA

E. O. 12065: GDS 10/2-85 (LANDAU, GEORGE W.) OR-M  
TAGS: PGOV, PINS, CI  
SUBJECT: LETELIER/MOFFITT CASE: FURTHER ANALYSIS OF SUPREME  
COURT DECISION

1. [REDACTED] - ENTIRE TEXT.

2. SUMMARY: FOLLOWING IS THE EMBASSY'S ANALYSIS OF THE COURT'S  
REASONING IN THE EXTRADITION DECISION. THE COURT GOES TO GREAT  
LENGTHS TO SHOW THAT CHILEAN LAW REQUIRES A CASE BUILT ON WELL-  
FOUNDED PRESUMPTION TO MEET EXTREMELY RIGOROUS TESTS. BY DISCREDITING  
KEY USG WITNESSES TOWNLEY AND CRUCHAGA, BY ELIMINATING FROM  
CONSIDERATION TOWNLEY'S CONFESSION TO OROZCO, AND BY REFUSING  
TO CONSIDER EVIDENCE GATHERED IN CHILE BY USG OFFICIALS OR SUBMITTED  
BY THEM AS AFFIDAVITS SIGNED BEFORE OUR CONSUL, THE COURT ERODES  
THE VARIOUS PRESUMPTIONS SET FORTH IN OUR BRIEF. WHILE  
ACKNOWLEDGING THAT AT LEAST TWO OF THE THREE ACCUSED WERE FOUND  
LYING AND MANY OF THE TRIO'S ACTIVITIES WERE SUSPICIOUS, IT  
RULES THAT TAKING INTO ACCOUNT ALL THE INFORMATION AVAILABLE  
IN THE CASE, THERE IS NOT ENOUGH EVIDENCE TO INDICT. END SUMMARY.

3. THE 132-PAGE DECISION FOLLOWS CHILEAN PRACTICE IN THAT THE  
OPERATIVE CONCLUDING RULINGS ARE TO FLOW FROM INDIVIDUALLY NUMBERED  
[REDACTED]  
[REDACTED]

PAGE 02 SANTIA 06910 01 OF 03 022340Z

CONSIDERATIONS. THE COURT SET OUT 180 OF THEM IN THIS DECISION;

Current Class: [REDACTED]

Page: 1

UNCLASSIFIED

D065  
K

ARGENTINA PROJECT (S200000044)  
U.S. DEPT. OF STATE, A/RPS/TPS  
Margaret P. Grafeld, Director  
(☒) Release (☐) Excise (☐) Deny  
Exemption(s): \_\_\_\_\_  
Declassify: (☐) In Part (☒) In Full  
(☐) Classify as \_\_\_\_\_ (☐) Extend as \_\_\_\_\_ (☐) Downgrade to \_\_\_\_\_  
Date \_\_\_\_\_ Declassify on \_\_\_\_\_ Reason \_\_\_\_\_

Current Class: [REDACTED]  
Current Handling: [REDACTED]  
Document Number: 1979SANTIA06910

UNCLASSIFIED

Page: 2  
Channel: n/a

Case Number: S200000044

THE APPROPRIATE SPECIFIC CONSIDERATION APPEARS IN PARENTHESIS IN THE MESSAGE FOR EASY REFERENCE.

4. THE DECISION LEADS OFF WITH THE OBSERVATION THAT, UNLIKE U.S. JURIES, CHILEAN JUDGES ARE BOUND BY STRICT RULES OF PROCEDURE ON THE KIND AND WIGHT OF ACCEPTABLE EVIDENCE. (2). IT REPRINTS THE USG INDICTMENT AND CHARGES (4) AND THE FORMAL EXTRADITION REQUEST (5). IT SUMMARIZES THE CHRONOLOGY (6-7).

5. THE NEXT SECTION DISCUSSES THE RULES OF EVIDENCE REQUIRES "TO INDICT IF THE CRIME HAD OCCURRED IN CHILE" (8-15) AND DETERMIES THAT TO CONVICT IN A CASE BUILT ON WELL-FOUNDED PRESUMPTIONS (AS OPPOSED TO DIRECT PHYSICAL EVIDENCE, MULTIPLE WITNESSES OR CONFESSIONS) THE LAW REQUIRES THAT SUCH PRESUMPTIONS MUST MEET THE FOLLOWING TESTS: "BE BASED ON REAL AND PROVEN FACTS, NOT OTHER PRESUMPTIONS; BE MULTIPLE AND GRAVE; BE PRECISE, SO THAT IT CANNOT LEAD TO VARIOUS INTERPRETATIONS; BE DIRECT, IN THAT IT LEADS NATURLLY AND LOGICALLY TO THE DEDUCED FACT; AND EACH FACT MUST AGREE WITH EVERY OTHER, SO THAT THEY ARE INTERR-RELATED AND ALL, WITHOUT ANY EXCEPTION, LEAD TO THE SAME CONCLUSION". (16). THE COURT ASSERTS THAT THE TEST FOR INDICTMENT IS ONLY SLIGHTLY LESS STRICT (17).

6. THE COURT THEN TURNS TO DISCREDITING THE TOWNLEY TESTIMONY (19-28). STARTING OFF WITH A SUMMARY OF TOWNLEY'S STATEMENT TO PROPPER (19), THE COURT REJECTS CONTRERAS' CONTENTION THAT TOWNLEY WAS A MREE INFORMER (20). BUT IN (21), A LENGTHY POINT WHICH WE CALL EYZAGUIRRE'S REVENGE (HIS PERSONAL HONOR HAVING BEEN IMPUGNED BY THE GOC'S IRREGULAR EXPULSION OF TOWNLEY), THE COURT REVIEWS THE EVENTS LEADING TO TOWNLEY'S DEPARTURE FRO CHILE "HANDCUFFED TO FBI AGENTS" AND THE TRIP GENERAL OROZCO MADE TO QUANTICO TO AUTHORIZE TOWNLEY'S PLEA BARGAIN. THE COURT LAMBASTS OROZCO FOR [REDACTED]  
[REDACTED]

PAGE 03 SANTIA 06910 01 OF 03 022340Z

NDERTAKING THE TRIP WHEN HE KNEW THAT NOTTHING HE OBTAINED COULD BE USED IN CHILE (I.E., THEREBY MAKING THE TOWNLEY STATEMENT TO OROZCO INADMISSIBLE -- IT IS NOT OTHERWISE ADDRESSED IN THE DECISION). THE TEXT OF THE PLEA BARGAIN IS FULLY REPRODUCED (23) AND HIS TESTIMONY DESCRIBED AS A "NEGOTIATED CONFESSION" 'LACKING ANY PROBATIVE VALUE" (25-26) EVEN AS A WITNESS (27-28).

7. THE COURT THEN LISTS OUR LAWYER'S DOZEN "WELL-FOUNDED PRE-SUMPTIONS" LINKING CONTRERAS TO THE MURDERS (29) AND ANALYZES

Current Class: [REDACTED]

Page: 2

UNCLASSIFIED

Current Class: [REDACTED]  
Current Handling: [REDACTED]  
Document Number: 1979SANTIA06910

UNCLASSIFIED

Page: 3  
Channel: n/a

Case Number: S200000044

THEM (30-56). THE COURT DRAWS ON THE COURT ATTORNEY'S OPINION IN THE EXTRADITION OF EX-ARGENTINE PRESIDENT CAMPORA TO ASSERT THAT THE HEAD OF AN ORGAINZATION IS NOT AUTOMATICALLY RESPONSIBLE FOR THE ACTIONS OF EACH OF ITS MEMBERS (32); THAT EVEN IF CONTRERAS WERE INVOLVED IN THE PARAGUAY GAMBIT, THIS DOES NOT LEAD DIRECTLY AND PRECISELY TO THE LETELIER/MOFFITT ASSASSINATIONS (37); THAT EVEN THOUGH THE ALLEGED WALTERS MISSION IS OBVIOUSLY UNTRUE AND THAT CONTRERAS MAY HAVE LIED ABOUT TOWNLEY'S PREVIOUS TRIPS FOR DINA, THESE ARE NOT "DIRECTLY AND PRECISELY" LINKED TO THE MURDERS. THE COURT DOES ACKNOWLEDGE THAT THE WHOLE PARAGUAYAN EPISODE IS "SUSPICIOUS" (41), AS WAS THE "ROMERAL-WILSON" TRIP TO THE U.S. (43), AND IT FINDS "VERY SUSPICIOUS" THE REMOVAL OF THE HOSPITAL RECORDS OF MRS. TOWNLEY (55). NONETHELESS, THE COURT DOES NOT BELIEVE THESE "SUSPICIONS" CAN BE DESCRIBED AS WELL-FOUNDED PRESUMPTIONS.

8. TURNING TO THE PRESUMPTIVE EVIDENCE OF ESPINOZA'S COMPLICITY (57-72), THE COURT BASICALLY REPEATS THE ASSESSMENTS MADE IN THE CASE OF CONTRERAS. IN THAT THE EVIDENCE IS BASED ON TOWNLEY'S TESTIMONY, IT IS DISMISSED (E.G. 58).

[REDACTED]  
NNN  
[REDACTED]

PAGE 01 SANTIA 06910 02 OF 03 022350Z  
ACTION SS-25

INFO OCT-01 ADS-00 SSO-00 /026 W  
-----005403 022354Z /65  
O 022248Z OCT 79  
FM AMEMBASSY SANTIAGO  
TO SECSTATE WASHDC IMMEDIATE 4894

[REDACTED] SECTION 2 OF 3 SANTIAGO 6910  
[REDACTED]

PASS JUSTICE FOR BARCELLA

9. UNDERCUTTING THE MUCH MORE DETAILED CASE AGAINST FERNANDEZ REQUIRED CONSIDERABLE EFFORT BY THE COURT (73-130). EACH OF ETCHEBERRY'S DOZEN PRESUMPTIONS IS ASSIGNED AN INDIVIDUAL NUMBER (74-85). THE COURT REVIEWS IN DETAIL THE GRAND JURY TRANSCRIPT OF LAN CHILE NEW YORK EMPLOYEE CRUCHAGA (90), HIGHLIGHTING

Current Class: [REDACTED]

Page: 3

UNCLASSIFIED

UNCLASSIFIED

Case Number: S200000044

A PORTION OF THE TRANSCRIPT IN WHICH PROPPER TELLS CRUCHAGA THAT HE IS DRIFTING FROM THE POINT. THE COURT ACCEPTS AS PLAUSIBLE THE DEFENDANTS' CONTENTION THAT CRUCHAGA FEARED PROSECUTION FOR SMUGGLING EXPLOSIVES INTO THE U.S. AND MODIFIED HIS TESTIMONY ACCORDINGLY. THUS "NOT ONLY IS THE TESTIMONY OF CRUCHAGE SUSPICIOUS, AND THEREFORE THE COURT FINDS IT A WEAK PRESUMPTION, IT IS, BESIDES, JUST ONE MAN'S WORD (COMMENT: SINCE TOWNLEY'S ESTIMONY DOESN'T COUNT) ... BUT EVEN IF TRUE, AND IF FERNANDEZ HAD PREARRANGED A MEETING WITH TOWNLEY THIS WOULD NOT BE A WELL-FOUNDED, DIRECT AND PRECISE PRESUMPTION, ALTHOUGH IT IS SUSPICIOUS." (92). THE COURT ACKNOWLEDGED THAT FERNANDEZ LIED IN DENYING HIS EARLIER TRIP TO ARGENTINA BUT AGAIN, WHILE SUSPICIOUS, IT IS NOT EVIDENCE OF PRESUMPTIVE GUILT (100).

10. THE COURT EXPLAINS AWAY INCRIMINATING STATEMENTS FERNANDEZ MADE TO PROPPER IN CHILE BY FINDING THEM "COMPLETELY WITHOUT PROBATIVE VALUE". THE COURT FOUND IT "COMPLETELY INEXPLICABLE" THAT PROPPER WOULD ACT IN AN "ABSOLUTELY ILLEGAL" MANNER BY TAKING [REDACTED]  
[REDACTED]

PAGE 02 SANTIA 06910 02 OF 03 022350Z

SUCH TESTIMONY IN CHILE BECAUSE "IT IS AN ELEMENTAL INTERNATIONAL NORM THAT A FOREIGN LAW OFFICIAL CANNOT ACT VALIDLY WITHIN THE TERRITORY OF ANOTHER SOVEREIGN, INDEPENDENT STATE" (103). THE COURT REVIEWS FERNANDEZ' DEFENSE AND FINDS HIM LYING WHEN HE SAYS HE DOES NOT KNOW LILIANA WALKER'S TRUE NAME (116) AND THAT HE UNDOUBTEDLY USED A FALSE NAME FOR CERTAIN PARTS OF HIS TRAVEL TO THE U.S. (119). BUT THE COURT DOES NOT BELIEVE AN AGENT ON A SECRET MISSION WULD USE HIS TRUE NAME WITH ABANDON ONCE N WASHINGTON, AND IT ACCEPTS THE DEFENSE ARGUMENT THAT IT IS INCREDIBLE FOR TOWNLEY NOT TO HAVE RETAINED THE NOTES FERNANDEZ HANDED HIM FROM HIS SURVEILLANCE (121). THE COURT ALSO FINDS IT "INCONCEIVABLE" THAT FERNANDEZ MISTOOK THE COLOR OF MRS. LETELIER'S CAR (124).

11. THE COURT APPLIES THE SAME LOGIC REGARDING THE LETELIER DEATH TO RONNI MOFFITT'S (131), AND IT RECONFIRMS BORQUEZ' DISMISSAL OF CHARGES OF CONSPIRACY AND MATERIAL DAMAGES SINCE THEY ARE NOT SPELLED OUT IN THE TREATY (132).

12. THE COURT NEXT ASSESSES THE WORTH OF OTHER USG EVIDENCE (134-147). MS. TOWNLEY'S TESTIMONY AND HER OTHER EVIDENCE IS DISMISSED ON THE SAME BASIS AS HER HUSBAND'S (136-137 AND 143). THE SIGNIFICANT STATEMENTS MADE TO FBI AGENTS IN CHILE BY THE

UNCLASSIFIED

Current Class: [REDACTED]  
Current Handling: [REDACTED]  
Document Number: 1979SANTIA06910

UNCLASSIFIED

Page: 5  
Channel: n/a

Case Number: S200000044

DINA PERSONNEL ASSIGNED TO TOWNLEY ARE RULED OF NO PROBATIVE VALUE BECAUSE THEY WERE NOT TAKEN BEFORE A CHILEAN MAGISTRATE IN ACCORDANCE WITH DOMESTIC LAW (140 AND 141).

13. REGARDING POSSIBLE TIES BETWEEN TOWNLEY AND THE CIA, THE COURT REVIEWS OUR AFFIDAVITS AND OBSERVES "FROM THESE FACTS THE REQUESTING GOVERNMENT BELIEVES THAT TOWNLEY'S MEMBERSHIP IN THE CIA, ESPECIALLY AT THE TIME OF THE BOMBING, HAS NOT BEEN ESTABLISHED." (148).

[REDACTED]

[REDACTED]

PAGE 03      SANTIA 06910    02 OF 03    022350Z

14. ALTHOUGH THE COURT FINDS THAT THE HOLCOMB AFFIDAVIT HAS LITTLE WEIGHT, SINCE A SWORN STATEMENT BY A POLICE OFFICIAL HAS LITTLE PROBATIVE VALUE IN CHILEAN LAW, IT ADDRESSES THE INCONSISTENCY BETWEEN THE NOTATION ON A HOLCOMB INVOICE INDICATING THAT HE HAD CONFIRMED TOWNLEY'S BONA FIDES WITH GENERAL CARRASCO ON FEBRUARY 15, WITH CARRASCO'S STATEMENT THAT HE WAS IN CHILE AT THAT TIME (151). OUR SUBSEQUENT CLARIFYING AFFIDAVITS ARE NOT DISCUSSED SINCE THEY WERE NOT ATTESTED TO BEFORE A CHILEAN JUDGE AND ARE THEREFORE INADMISSIBLE (152). THE COURT ALSO NOTES THAT IT DID NOT HAVE TO LOOK AT THE FILM REPRODUCING THE BOMBING SINCE IT HAD NO DIRECT BEARING ON THE ISSUE (154).

15. THE COURT THEN WENT ON TO DISQUALIFY REAMS OF THE EXHIBITS SUBMITTED BY THE DEFENSE (156-166). THEY LARGELY CONSIST OF TESTIMONIALS, PRESS CLIPPINGS, AND OTHER IRRELEVANT MATERIAL. BUT THE COURT DID MAKE A HALF-HEARTED EFFORT TO VERIFY AND CHECK OUT CONTRERAS' CONTENTION THAT THE LILIANA WALKER/FERNANDEZ TRIP WAS TO LOOK INTO POSSIBLE MISDOINGS AT THE CHILEAN COPPER CORPORATION'S NEW YORK OFFICE. ALTHOUGH IT VERIFIED THE ACCURACY OF A CLASSIFIED FOREIGN MINISTRY CABLE FROM MONTREAL IN 1975, IT FOUND IT IMPOSSIBLE TO LEARN WHEN THE NEW YORK OFFICE OPENED AND IF THE PERSON DESCRIBED IN THE MONTREAL CABLE WAS ASSIGNED THERE. THE COURT DID NOT QUESTION HOW CONTRERAS CAME INTO POSSESSION OF THE CABLE ITSELF (167).

16. REFERRING TO VARIOUS PREVIOUS PARAGRAPHS, THE COURT SAID THAT THE EVIDENCE DID NOT ESTABLISH THE CULPABILITY OF CONTRERAS, SPINOZA, AND FERNANDEZ IN THE ASSASSINATIONS (168-177). THE COURT SAID "THAT IT SERVES NO PURPOSE TO ANALYZE WHETHER THE FOREMENTIONED SUSPICIONS ABOUT PARTICIPATION, MULTIPLE AND VARIED THOUGH THEY MIGHT BE, ARE WELL-FOUNDED BECAUSE EVEN

Current Class: [REDACTED]

Page: 5

UNCLASSIFIED

Current Class: [REDACTED]  
Current Handling: [REDACTED]  
Document Number: 1979SANTIA06910

UNCLASSIFIED

Page: 6  
Channel: n/a

Case Number: S200000044

IF THEY WERE, ACCORDING ... (SPECIFIC CITIATION) ... THE PENAL PROCEDURES CODE, THE CONSEQUENCES FOR THE ACCUSED BETWEEN WELL-FOUNDED SUSPICIONS AND WELL-FOUNDED PRESUMPTIONS ARE COMPTETELY DIFFERENT: IN THE FIRST CASE, DETENTION SHOULADBE ORDERED; IN THE SECOND, INDICTMENT" (174).

[REDACTED]

[REDACTED]

PAGE 04 SANTIA 06910 02 OF 03 022350Z

[REDACTED]

NNN

[REDACTED]

PAGE 01 SANTIA 06910 03 OF 03 022354Z  
ACTION SS-25

INFO OCT-01 ADS-00 SSO-00 /026 W  
-----005460 030002Z /65

O 022248Z OCT 79  
FM AMEMBASSY SANTIAGO  
TO SECSTATE WASHDC IMMEDIATE 4895

[REDACTED] SECTION 3 OF 3 SANTIAGO 6910

[REDACTED]

PASS JUSTICE FOR BARCELLA

17. KEY PROVISION (178) STATES THAT SINCE THE EVIDENCE DOES NOT JUSTIFY INDICTMENT IT WOULD BE IMPROPER TO ORDER AN INVESTIGATION/TRIAL OPENED ON HOMICIDE CHARGES BASED ON THE INFORMATION IN THE FILE TO DATE. HOWEVER, THE COURT EXPLICITLY STATED THAT IF NEW EVIDENCE APPEARD ON THE HOMICIDE CHARGE IT COULD BE INCLUDED IN CASE 192-78 (DOCUMNET FRAUD AND OTHERS ....). THE COURT INSTRUCTED THE MILITARY PROSECUTOR TO TAKE INTO ACCOUNT EVIDENCE OF FALSIFICATION OF PASSPORTS AND IDENTITY CARDS. (SEE, ALSO, SANTIAGO 6871 FOR FULL TRANSLATION OF THIS PROVISION AND THE OPERATIVE PARTS OF THE DECISION.)

18. THE COURT COMPLETED ITS ANALYSIS BY EEXPRESSION "SURPRISE" AT THREE SPECIFIC ASPECTS OF TH EXTRADITION CASE: A) THE OROZCO TRIP TO QUANTICO; B) THE ACTIVITES IN CHILE OF USG PROSECUTOR PROPPER AND FBI AGENTS; AND C) THE REMOVAL OF TRACES OF MS.

Current Class: [REDACTED]

Page: 6

UNCLASSIFIED

Current Class: [REDACTED]  
Current Handling: [REDACTED]  
Document Number: 1979SANTIA06910

UNCLASSIFIED

Page: 7  
Channel: n/a

Case Number: S200000044

TOWNLEY'S STAY IN THE MILITARY HOSPITAL (179). "THE COURT CONCURS WITH THE FINDING OF THE FIRST INSTANCE JUDGE ... (IN WHICH .... HE FOUND ABSURD REPLIES, IMPLAUSIBLE OR CONTRARY TO ESTABLISHED FACTS, MADE BY THE ACCUSED ARMANDO FERNANDEZ LARIOS AND MANUEL CONTRERAS, BUT THIS DOES NOT MERIT THEIR INDICTMENT FOR CRIMES MATERIAL TO THIS EXTRADITION .... (180). ON THIS NOTE, THE COURT THEN REACHES THE PREVIOUSLY REPORTED SIX POINT DECISION.

[REDACTED]

[REDACTED]

PAGE 02      SANTIA 06910    03 OF 03    022354Z

19. COMMENT: IT SEEMS CLEAR FROM OUR READING OF THE ENTIRE DECISION THAT THE COURT CAME MUCH CLOSER TO THE CHAMORRO OPINION (THAT EVIDENCE USED IN EXTRADITION CASES HAD TO COMPLY WITH LOCAL LAW TO BE ADMISSIBLE) THAN TO THE BORQUEZ DECISION (WHICH BASICALLY HELD THAT ALL SUCH EVIDENCE COULD BE CONSIDERED ALTHOUGH BORQUEZ ATTACHED LITTLE WEIGHT TO TOWNLEY'S PLEA BARGAIN TESTIMONY). THE REVIEW PANEL DECISION SEEMINGLY REFUSED TO CONSIDER AFFIDAVITS SUBMITTED BY FBI AGENTS ATTESTED TO BEFORE THE U.S. CONSUL AND EVIDENCE GATHERED BY PROPPER AND THE FBI IN CHILE. THE COURT FOUND THIS MATERIAL, AS WELL AS THE TOWNLEYS' STATEMENTS, OF "NO PROBATIVE VALUE." THE COURT ALSO APPLIED CHILEAN RULES OF EVIDENCE TO WEIGHING AFFIDAVITS SUBMITTED BY FBI AGENTS ALTHOUGH DULY SWORN IN THE U.S. SUCH STATEMENTS OF RECORD MADE BY POLICE IN CHILE APPARENTLY HAVE LITTLE EVIDENTIARY VALUE. IN ADDITION, THE COURT ALSO GAVE LITTLE CREDENCE TO CRUCHAGA, BASED ON ITS ASSESSMENT OF WHAT MIGHT HAVE MOTIVATED HIS TESTIMONY.

LANDAU

[REDACTED]

NNN

Current Class: [REDACTED]

Page: 7

UNCLASSIFIED